

Perth and Kinross Council
Development Management Committee – 12 May 2016
Report of Handling by Development Quality Manager

Engineering works to pond at Land to the East of the U165, Donavoured

Ref. No: 16/00079/FLL

Ward No: 4– Highland

Summary

This report recommends approval of the application for engineering works to a pond as the development is considered to comply with the relevant provisions of the Development Plan.

BACKGROUND AND DESCRIPTION

- 1 Full planning consent is sought for engineering works to a pond which is situated within plot 4 of a 4 house development which was granted planning consent in January 2008 (07/02495/FUL).
- 2 Plot 4 is the southern most of the four plots originally granted planning consent. The application site is bound to its west by the U165 public road, to the south and east by residential properties and to the north by the remainder of the new housing development referred to above. The pond occupies the south east corner of the application site and much of the site is wooded, although some felling has taken place which is addressed elsewhere in this report. This application is a re-submission following the refusal of a similar proposal at Development Management Committee in October 2013 following an officer recommendation of approval.
- 3 The previous application was refused for the following reasons:
 - *The proposed re-planting plan will not entirely make up for the loss of mature trees from the site and will have an impact on the visual amenity of the area*
 - *The proposal is contrary to (a) Policy 7 of the Highland Area Local Plan and Policy EP7 of the Proposed Local Development Plan in that there is a potential flooding risk and (b) Policy 17 of the Highland Area Local Plan and Policy N3 of the Proposed Local Development Plan in that it will have a detrimental impact on biodiversity associated with the pond.*
- 4 The pond in the south east corner of the house plot was once associated with the Mill to the south which is now in use as residential accommodation. A small watercourse runs from the north east into the pond. The water in the pond discharges to the south of the site into a further water course.
- 5 This application seeks to alter the banks of the pond as they are currently steep. The supporting statement submitted with the application states that as

the pond edges are steep it is potentially a hazard for small children and would be extremely difficult for a weak person to pull themselves out. It goes on to state that this observation has been made by a number of potential purchasers and the applicant considers it to be the pond which is resulting in this remaining plot being unsold in the years following refusal of the 2013 application. This follow up application includes native aquatic planting to improve the overall bio diversity value of the pond which is currently considered, in my opinion and the opinion of the Council's Bio Diversity Officer, to be limited due to the lack of any existing vegetation. The proposal also includes replacement tree planting including Birch, Field Maple and Rowan. It should be noted that the recommendation within this report is based upon the planning policy considerations of carrying out works to the pond and the reasons for carrying out the works are inconsequential to the recommendation.

- 6 An original application for this site was previously withdrawn which sought to entirely infill the pond (12/01747/FLL). This application was withdrawn due to concerns which had been expressed by SEPA and the Council's Flood Risk Officer regarding potential flood risk. The proposal has been revised to retain the pond but carry out works to infill parts of the bank to provide a 1 in 4 slope. These revised works are a result of discussions with SEPA and the Flood Officer. This submission is very similar to the previously refused 2013 application but with slightly differing proposals relating to tree felling and replacement planting.

NATIONAL POLICY AND GUIDANCE

- 7 The Scottish Government expresses its planning policies through The National Planning Framework, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

DEVELOPMENT PLAN

- 8 The Development Plan for the area consists of the Approved TAYplan Strategic Development Plan 2012 and the Adopted Perth and Kinross Local Development Plan 2014.

TAYplan: Strategic Development Plan 2012-2032

- 9 The principal relevant policies are in summary: -

Policy 3: Managing TAYplan's Assets

- 10 Understanding and respecting the regional distinctiveness and scenic value of the TAYplan area through:
 - Ensuring development likely to have a significant effect on a designated or proposed Natura 2000 sites (either alone or in combination with other sites or projects), will be subject to an appropriate assessment. Appropriate mitigation requires to be identified where necessary to ensure there will be

no adverse effect on the integrity of Natura 2000 sites in accordance with Scottish Planning Policy.

- Safeguarding habitats, sensitive green spaces, forestry, wetlands, floodplains (in-line with the water framework directive), carbon sinks, species and wildlife corridors, geodiversity, landscapes, parks, townscape, archaeology, historic buildings and monuments and allow development where it does not adversely impact upon or preferably enhances these assets.

Perth and Kinross Local Development Plan 2014

- 11 The Local Development Plan (LDP) was adopted by Perth and Kinross Council on 3 February 2014. It is the most recent statement of Council policy and is augmented by Supplementary Guidance
- 12 The principal policies are, in summary:

Policy PM1A - Placemaking

- 13 Development must contribute positively to the quality of the surrounding built and natural environment, respecting the character and amenity of the place. All development should be planned and designed with reference to climate change mitigation and adaptation.

Policy PM1B - Placemaking

- 14 All proposals should meet all eight of the placemaking criteria.

Policy NE2B - Forestry, Woodland and Trees

- 15 Where there are existing trees on a development site, any application should be accompanied by a tree survey. There is a presumption in favour of protecting woodland resources. In exceptional circumstances where the loss of individual trees or woodland cover is unavoidable, mitigation measures will be required.

Policy NE3 - Biodiversity

- 16 All wildlife and wildlife habitats, whether formally designated or not should be protected and enhanced in accordance with the criteria set out. Planning permission will not be granted for development likely to have an adverse effect on protected species.

Policy ER6 - Managing Future Landscape Change to Conserve and Enhance the Diversity and Quality of the Areas Landscapes.

- 17 Development proposals will be supported where they do not conflict with the aim of maintaining and enhancing the landscape qualities of Perth and Kinross and they meet the tests set out in the 7 criteria.

Policy EP2 - New Development and Flooding

- 18 There is a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source, or where the proposal would increase the probability of flooding elsewhere. Built development should avoid areas at significant risk from landslip, coastal erosion and storm surges. Development should comply with the criteria set out in the policy.

OTHER POLICIES

- 19 None

SITE HISTORY

- 20 07/02495/FUL Erection of 4 dwellinghouses with garaging facilities and formation of an improved access – Approved under delegated powers in January 2008
- 21 12/01373/FLL Infilling of pond - Withdrawn
- 22 12/01747/FLL Infilling of pond and formation of a stream – Withdrawn
- 23 13/00089/FLL Engineering Works to Pond – Refused at Development Management Committee after officer recommendation of approval for reasons outlined in introduction above.

CONSULTATIONS

EXTERNAL

SEPA

- 24 No objection on flood risk grounds

INTERNAL

Flood Prevention Officer

- 25 No objection overall however conditions recommended regarding detail of proposed works and provision of a maintenance schedule to allow efficient operation of the pond, pipe and weir structure.

Bio Diversity Officer

- 26 Proposal is considered to enhance the bio diversity value of the area and conditions have been recommended regarding the timing of works

REPRESENTATIONS

- 27 A total of 4 letters of representation were received. Three object to the proposal and one states it does not object but raises issues of concern.
- 28 The representations have raised the following relevant issues: -
- Flood Risk
 - Visual Amenity
 - Bio Diversity/protected species
 - Loss of trees
 - Contrary to local and national policy
 - Proposal is almost identical to previously refused application
 - Detail and accuracy of plans.
- 29 These issues are all raised in the Appraisal section of this report.

ADDITIONAL STATEMENTS

Environment Statement	Not required
Screening Opinion	Not required
Environmental Impact Assessment	Not required
Appropriate Assessment	Not required
Design Statement / Design and Access Statement	None
Report on Impact or Potential Impact	None submitted

APPRAISAL

Policy

- 30 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended by Planning Etc (Scotland) Act 2006 require that planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise. The determining issues in this case are whether: - the proposal complies with Development Plan policy; or if there are any other material considerations which justify a departure from policy. The most relevant policies of the Council's Local Development Plan (LDP) 2014 are outlined in the policy section above.

Bio Diversity

- 31 A number of letters of representation raise concerns that the engineering works to the pond will have a detrimental impact on bio diversity associated with the pond. Policy NE3 of the LDP requires the Council to consider protected species in determining any planning application. The Council's Bio Diversity Officer has been consulted on the proposal as he was on the 2013 application. He has stated that he has visited the site on three separate occasions, at different times of the year and the only species directly associated with the

pond were a group of mallard ducks. The ducks were also present during the planning officer's visit to the site. The Bio Diversity Officer considers the pond to be "oligotrophic" meaning that it is very clear with little or no vegetation and as a consequence is unlikely to be able to support much wildlife. He also states that within a 1km radius there are at least three other ponds which are possibly of better value for wildlife. This proposal also includes additional aquatic planting within the pond in order to provide improved habitat for bio diversity within the pond.

- 32 The Bio Diversity Officer has indicated that he considers the proposal to result in significant improvement to the Bio Diversity value of the pond. Whilst it is noted that trees were felled in this area, this proposal seeks to re-introduce native planting which will again result in an overall improvement to the bio diversity value of the pond and its immediate surroundings by providing additional wildlife habitat. For the avoidance of any doubt a condition is recommended to restrict the timing of felling works and to ensure consideration of any nesting birds on site is given. Given this response from the Council's Biodiversity Officer and from the evidence available to me during my site visit I am satisfied that the engineering works to the pond will not result in any significant harm to any protected species and will introduce planting in order to improve wildlife habitat and as such the proposal is considered to comply with Policy NE3 in that regard.

Flooding

- 33 Similar to the biodiversity issues outlined above, letters of representation have raised concerns regarding potential flood risk. Policy EP2 of the LDP states that there is a general presumption against development on areas which are prone to flooding or which would result in flooding elsewhere. Due to the concerns which have been expressed by neighbours and the reason for refusal of the previous 2013 application, the Council's Flood Risk Officer and SEPA have been consulted.
- 34 SEPA and the Council's Flood Prevention Officer objected to the original 2012 application for the complete removal of the pond. The application now proposes to reduce the gradient along the banks of the pond by using material from the north shore, similar to the proposals outlined in the 2013 application. No material will be imported for infilling purposes. An additional 150mm pipe is also planned to be placed at a lower level than the current outlet weir which will reduce pond levels during low flows.
- 35 The Supporting Statement for the 2013 application notes that it is important to keep the diameter of the pipe small to avoid significant increases in flow downstream during peak flows. The Flood Officer states that installing the pipe should act as a throttle during high flows, allowing the pond to fill to its original water level before the current weir level is reached, this (the weir) will act as an overflow during high flows and is being retained at its present level. The Flood Officer also states that provided the pond is correctly maintained this should be of benefit to residents in the lower part of the catchment. The Flood Prevention Officer also comments that the trash screen on the outlet pipe should be

installed at between 45 degrees and 60 degrees to allow ease of maintenance and this can be secured by a suitably worded condition.

- 36 The maintenance of the 150mm pipe and trash screen will lie with the land owner and it is essential that this take place to allow efficient operation of the pond, pipe and weir structure. As such I consider it appropriate to ensure this through a condition.
- 37 The statement also notes that there will be a small amount of additional flood storage held within the pond during high flows although no modelling has been undertaken regarding this. The volume lost through infilling will be comparatively small as material is being taken from the pond area itself.
- 38 The Council's Flood Prevention Officer and SEPA have offered no objection to the proposals and conditions regarding the maintenance of the outlet pipe are recommended. Therefore despite the previous refusal by the Council of the proposal on flood risk grounds I remain of the view that the proposal is in accordance with Policy EP7 having fully considered the submission and consultation comments from the Flood Prevention Officer and SEPA neither of which object to the application.

Loss of Trees/Visual Amenity

- 39 The supporting statement submitted with the 2013 application stated that no trees will be affected by the engineering works to the pond. However, during the course of that application, a number of trees were felled on the site. This resulted in a number of complaints from neighbours. The 2007 consent for residential development on this site indicated the retention of trees on site, as this was marked on the approved plans, and as such the felling of trees on the site was a breach of planning control. The Council's Enforcement Officer wrote to the applicant seeking a re-planting plan as the felling which had taken place was considered to detrimentally impact on the visual amenity of the area given the proximity of the site to the public road. A re-planting plan was submitted which outlined additional trees, shrubs and hedging. Whilst it was clear that the re-planting scheme would not entirely make up for the loss of mature trees from the site it was considered to be a reasonable compromise given the felling that has occurred. Furthermore the trees to be replanted will mature and over time will improve the visual amenity of the area. The trees to be planted as part of this scheme are yet to be planted.
- 40 The Development Management Committee did not agree with the conclusion of the officer and the 2013 application was refused due to the lack of tree planting and its failure to make up for the loss.
- 41 In this instance the proposal includes a similar level of re-planting on the site and includes native species. The submission argues that the scale of trees to be planted is more appropriate for a domestic garden. In this revised proposal the applicant wishes to remove additional trees to those which have already been felled. These are large conifer and spruce trees at the south end of the site which are growing on the banking between the pond and retaining wall.

The statement argues that these trees could potentially threaten the stability of the bank if they were uprooted, possibly risking a breach to the pond. They also cast a shadow over the pond which contributes to its limited bio diversity value. Whilst no detailed tree survey of these particular trees has been provided I do believe the argument of the applicant within the statement is logical. The statement includes an indicative garden layout to demonstrate the detail of re-planting proposed.

- 42 Whilst I acknowledge that the site was more wooded previously than it is now I consider the remaining level of planting on site to be reasonable in the context of the built development in the surrounding area and I consider those trees which will be retained, together with the re-planting proposed to be appropriate and therefore in accordance with Policy PM1A and B of the LDP.
- 43 The new pipe proposed at the southern end of the pond will result in the water level of the pond reducing and at some times of the year, depending on rainfall the pond may have very little water in it but it will always exist at a wetland area. The outfall pipe at the southern end only discharges a small amount of water at a time to ensure flood risk is not increased downstream and therefore the level of water in the pond will rise occasionally depending on rainfall. At those times the pond basin will fill and the flood water slowly released until the pond reaches a lower level again. I have no concerns with the depth of the pond reducing, I do not consider this to impact detrimentally on visual amenity.
- 44 A condition is recommended to ensure the re-planting is carried out within a reasonable timescale. A condition to ensure the protection of existing trees during construction operations is also recommended. I am satisfied that this re-planting scheme is sufficient to address the impact of the unauthorised felling and ensures that a sufficient landscape buffer will be retained between the public road, neighbouring properties and the housing site. I therefore believe that the application complies with the policies of the Development Plan relating to visual amenity, placemaking and landscape character.

Accuracy of Plans

- 45 The plans are considered to be sufficient in order for an assessment of the proposal to be made.

Economic Development

- 46 There are no economic development implications as a result of this development.

LEGAL AGREEMENTS

- 47 None required

DIRECTION BY SCOTTISH MINISTERS

- 48 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

CONCLUSION AND REASONS FOR RECOMMENDATION

- 49 In conclusion, the application must be determined in accordance with the adopted Development Plans unless material considerations indicate otherwise. In this respect, despite the previous refusal of the Council, I remain of the view that the proposal complies with the adopted Perth and Kinross Local Development Plan 2014 and TAYplan 2012. I have taken account of material considerations and find none that would justify overriding the adopted Development Plan. On that basis the application is recommended for approval subject to conditions.

RECOMMENDATION

A Approve the application subject to the following conditions:

- 1 The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.

Reason - To ensure that the development is carried out in accordance with the plans approved.

- 2 The re-planting as indicated on drawing ref: 16/00079/2 shall be carried out and completed in full within 6 months of the approval of this application, all to the satisfaction of the Council as Planning Authority.

Reason - In order to ensure the replanting is carried out within a reasonable timescale.

- 3 All trees marked for retention on the approved plans shall be retained and protected in line with BS 5837:2012 Trees in Relation to Design, Demolition and Construction. All protective fencing required shall remain in place for the duration of works at the site and shall only be removed upon completion of all works, all to the satisfaction of the Council as Planning Authority.

Reason - In order to provide protection for retained trees during construction works.

- 4 The trash screen on the outlet pipe shall be installed at an angle of between 45 degrees and 60 degrees rather than vertically against the headwall. A revised plan demonstrating this change shall be submitted to and approved in writing by Planning Authority prior to the commencement of any development. The

details, as approved in writing, shall be implemented as part of the site development and completed in their entirety alongside the works to the pond.

Reason - In order to allow for regular maintenance

- 5 The 150mm pipe and trash screen shall be maintained and kept free of obstruction at all times. All debris shall be removed and vegetation cut back in order to maintain a functioning outlet pipe. All to the satisfaction of the Council as Planning Authority in consultation with SEPA.

Reason - To ensure the pipe and trash screen are kept free from obstruction

- 6 No removal of vegetation, including trees and shrubs will take place between 1st March and 31st August inclusive unless a competent ecologist has undertaken a careful and detailed check of vegetation for active birds' nests immediately before the vegetation is to be cleared and provided written confirmation to the Planning Authority that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds on site. Any such written confirmation must be submitted to and approved in writing by the Planning Authority prior to commencement of works.

Reason – To protect any birds which may be present on site at the time of felling.

- 7 Where it is intended to create semi-natural habitats, all species used in the planting proposals as detailed in drawing 16/00079/2 shall be locally native species of local provenance unless otherwise agreed in writing with the Planning Authority.

Reason – In order to improve bio diversity in the area.

B JUSTIFICATION

The proposal is considered to comply with the Development Plan and there are no other material considerations that would justify a departure there from.

C PROCEDURAL NOTES

None

D INFORMATIVES

- 1 Under Section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

- 2 As soon as practicable after the development is complete, the person who completes the development is obliged by Section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 3 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 4 Any further changes to the pond will require further planning consent. If the applicant/owner intends to carry out further changes to the pond contact should be made with the Planning Authority and SEPA prior to carrying out any works.
- 5 The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended, it is an offence to remove, damage or destroy the nest of any wild birds while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act.

Background Papers: 4 letters of representation

Contact Officer: John Williamson – Ext 75360

Date: 28 April 2016

Nick Brian
Development Quality Manager

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